

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES E. THOMPSON,	:	
GDC No. 497699,	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	1:14-CV-1269-TWT-ECS
	:	
STATE OF GEORGIA,	:	
Defendant.	:	

FINAL REPORT AND RECOMMENDATION

James E. Thompson is a state inmate subject to the "three strikes" provision and filing restrictions in 28 U.S.C. § 1915(g). See Thompson v. Wiley, No. 1:06-CV-923-TWT (N.D. Ga. Apr. 17, 2006) [Doc. No. 2 therein (listing Mr. Thompson's "strikes")]. Mr. Thompson seeks to proceed in forma pauperis in this action. However, under the three strikes rule, Mr. Thompson must pay the case initiation fee of \$400 in each new matter he files, unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Mr. Thompson has not paid the fee, nor does his complaint, which asserts that he has been unjustly prosecuted, [Doc. No. 1], allege that he is under imminent danger of serious physical injury.

Accordingly, the undersigned **RECOMMENDS** that Mr. Thompson be **DENIED PERMISSION** to proceed in forma pauperis.

The United States Court of Appeals for the Eleventh Circuit has instructed district courts that when a prisoner is subject to

the "three strikes" provision of § 1915(g), "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis." Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002). "The prisoner cannot simply pay the filing fee after being denied in forma pauperis status. He must pay the filing fee at the time he initiates the suit." Id. (emphasis in original).

Accordingly, the undersigned **RECOMMENDS** that Mr. Thompson's complaint [Doc. No. 1] be **DISMISSED WITHOUT PREJUDICE**.

The Clerk is **DIRECTED** to terminate the referral of this case to the undersigned.

SO RECOMMENDED AND DIRECTED, this 7th day of May, 2014.

S/ E. Clayton Scofield III
E. CLAYTON SCOFIELD III
UNITED STATES MAGISTRATE JUDGE